

6 Official Opinions of the Compliance Board 89 (2009)

Notice – Procedures – Failure to retain copy for one year: violation

February 26, 2009

Michele J. Fluss

The Open Meetings Compliance Board has considered your complaint alleging that the State Water Quality Advisory Committee (“SWQAC”) violated the Open Meetings Act by failing to retain copies of notices of certain meetings for the requisite period. For the reasons explained below, we find that the failure of SWQAC to retain a copy of notices that appeared on its website for certain meetings violated the Act.

I

Background

This complaint is a sequel to an earlier complaint, resulting in an opinion in which we considered several issues relating to notice of SWQAC meetings. *See 6 OMCB Opinions* 41 (2008). After the release of that opinion, the complainant asked that we reconsider the decision. We declined to do so. However, because that opinion did not explicitly address the obligation of a public body to retain a copy of a written notice for at least one year after the date of the meeting, §10-506(d),¹ we informed the complainant that we would consider a separate complaint limited to this single issue.

The subsequent complaint focused on two meetings, which took place on December 7, 2007, and February 1, 2008, and the retention of notices that appeared on SWQAC’s website. When we submitted the complaint to SWQAC for a response, we requested that SWQAC submit to us any notice that appeared on SWQAC’s website for these meetings and, in the event notice for either meeting was not given through SWQAC’s own website, copies of any other notice that SWQAC relied on in satisfying the notice obligation for the two meetings at issue. §10-502.5(c)(2)(ii)1.

¹ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

In a timely response on behalf the SWQAC, Assistant Attorney General Nancy W. Young indicated that SWQAC did post notices of its December 7, 2007, and February 1, 2008, meetings on its website. However, it did not retain copies of these notices “in the mistaken belief that the notices were archived by the web host.” In April, SWQAC learned that notices were not archived and, as a result, has been maintaining paper copies since that time. The response also noted that meeting notices are also posted on the Maryland Department of the Environment (“MDE”) website. The response included copies of meeting notices for various dates from both websites, including a copy of the notice from the MDE website for the December 7, 2007, meeting. According to the response, SWQAC was surprised by the complaint because SWQAC had acknowledged in its response to the earlier complaint, filed by the same complainant, that MDE was unable to locate a copy of the notice for the February 2008 meeting. However, SWQAC did provide a copy of a notice from the Department of Natural Resources website, indicating that SWQAC meets the first Friday of every even month at MDE, and including a link to SWQAC’s website and a contact person. SWQAC also provided a copy of the description of SWQAC from the *Maryland Manual Online*, which indicated that SWQAC meets the first Friday of February, April, June, August, October, and December at 9:30 a.m. and providing contact information.

II

Analysis

As noted above, our review here is limited to a single issue, that is, did SWQAC fail to retain a copy of its notice of meetings held December 7, 2007, and February 1, 2008 as required under the Act. We are not revisiting the broader questions of notice addressed in our prior opinion.² SWQAC acknowledged that it failed to retain copies of meetings notices that appeared on its website before April 2008, based on the mistaken belief that the website archived the information. The Act requires that, “[a] public body ... keep a copy of a notice provided under this section for at least 1 year after the date of the session.” §10-506(d). As a result, a violation of §10-506(d) occurred. While alternative notices produced by SWQAC

² Following our receipt of the response, we received another detailed letter from the complainant raising additional issues, notwithstanding the fact that both the complainant and SWQAC were advised of the limited issues we agreed to address. The complainant appears to again request that our initial opinion be reconsidered, a request we had already denied. The complainant seems to suggest that the inability to reproduce a specific notice for the February 1, 2008, meeting necessarily suggests no notice was provided and “openness violations occurred,” a proposition that is nonsensical given the record developed in connection with the two opinions.

might make the violation appear de minimis, copies from SWQAC's own website should have been retained. We commend SWQAC for modifying its procedure once the deficiency was discovered.

OPEN MEETINGS COMPLIANCE BOARD

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